



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2004

Mr. Renaldo L. Stowers  
Associate General Counsel  
University of North Texas System  
P. O. Box 310907  
Denton, Texas 76203-0907

OR2004-3532

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200454.

The University of North Texas Police Department (the "department") received a request for certain information pertaining to a specified arrest. You indicate that you have provided the requestor with some of the requested information, including "basic information" regarding the arrest and alleged crime. *See* Gov't Code § 552.108(c) (stating basic information regarding crime not excepted from disclosure under Gov't Code § 552.108); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>1</sup>

---

<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the submitted information includes an arrest warrant affidavit. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. Thus, article 15.26 of the Code of Criminal Procedure makes an arrest warrant affidavit presented to a magistrate in support of the issuance of an arrest warrant public. As a general rule, the exceptions to disclosure found in the Public Information Act (the "Act") do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, we conclude that the department must release the arrest warrant affidavit, that we have marked, to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

You claim that a portion of the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the case associated with the submitted information is pending further criminal investigation and prosecution. Thus, based on our review of your arguments and the information at issue, we find that section 552.108(a)(1) is applicable to this information. Accordingly, we conclude that the department may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You claim that social security numbers that are contained within the remaining submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>2</sup> Information is protected from

---

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section

disclosure by the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. We note, however, that this office has previously determined that the common-law right to privacy does not protect social security numbers from disclosure. *See Open Records Decision Nos. 226 (1979) (noting social security numbers not protected under privacy), 169 (1977).* Accordingly, we conclude that the department may not withhold any of the social security numbers contained within the remaining submitted information under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

However, you also claim that these social security numbers are excepted from disclosure pursuant to section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).<sup>3</sup> These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994).* The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Thus, we have no basis for concluding that social security numbers contained within the remaining submitted information are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that portions of the remaining submitted information may be excepted from disclosure pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

---

552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

<sup>3</sup> Section 552.101 also encompasses information that is protected from disclosure by other statutes.

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(3) current or former employees of the Texas Department of Criminal Justice ["TDCJ"] or of the predecessor in function of the department or any division of the department[.]

(4) commissioned security officers as defined by Section 1702.002, Occupations Code.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). Accordingly, we conclude that if the information that we have marked under section 552.1175 pertains to an individual listed in section 552.1175(a) who elects to restrict access to his or her such information in accordance with section 552.1175(b), then the department must withhold that information pursuant to section 552.1175 of the Government Code.

Finally, you claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). Based on our review of your arguments and the remaining submitted information, we conclude that the department must withhold the portions of this information, which we have marked, pursuant to section 552.130 of the Government Code.<sup>4</sup>

In summary, the department must release the arrest warrant affidavit that we have marked to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. The department

---

<sup>4</sup> Because our ruling is dispositive, we need not address your remaining claimed exception to disclosure.

may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. Social security numbers contained within the remaining submitted information may be confidential under federal law. The department must withhold the information that we have marked under section 552.1175, if it pertains to an individual listed in section 552.1175(a) who elects to restrict access to his or her such information in accordance with section 552.1175(b) of the Government Code. The department must also withhold the information that we have marked pursuant to section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive, flowing style.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 200454

Enc. Marked documents

c: Mr. Timothy E. Powers  
1500 East McKinney Street, Suite 200  
Denton, Texas 76209-4526  
(w/o enclosures)